

**BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

BRENT LEE GIBSON

Respondent.

Case No. 2009-125

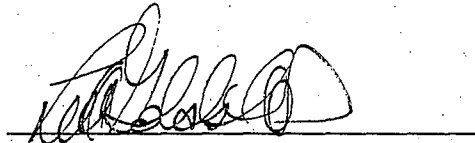
OA# No. L-2010091115

DECISION AND ORDER

The attached Revised Stipulated Settlement is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on August 4, 2011.

It is so ORDERED July 5, 2011.



A handwritten signature in black ink, appearing to be 'R. Blakely', is written over a horizontal line.

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 LANGSTON M. EDWARDS
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Attorneys for Complainant

7
8 **BEFORE THE**
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. CC-2009-125

11 **BRENT LEE GIBSON**

12 Respondent.

OAH No. L-2010091115

13 **[REVISED] STIPULATED**
SETTLEMENT AND DISCIPLINARY
14 **ORDER**

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17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

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20 **PARTIES**

21 1. Mona Maggio ("Complainant") is the Executive Officer of the State Board of
22 Optometry ("Board"). Complainant brought this action solely in her official capacity and is
23 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
24 Langston M. Edwards, Deputy Attorney General.

25 2. Respondent Brent Lee Gibson ("Respondent") is representing himself in this
26 proceeding and has chosen not to exercise his right to be represented by counsel.
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1 3. On or about September 16, 1993, the Board of Optometry issued Optometry
2 Certificate of Registration No. 10198 to Respondent. The Optometry Certificate of Registration
3 was in full force and effect at all times relevant to the charges brought in Accusation No. CC-
4 2009-125 and will expire on October 31, 2011, unless renewed.

5
6 **JURISDICTION**

7 4. Accusation No. CC-2009-125 was filed before the Board and is currently pending
8 against Respondent. The Accusation and all other statutorily required documents were properly
9 served on Respondent on August 25, 2010. Respondent timely filed his Notice of Defense
10 contesting the Accusation. A copy of Accusation No. CC-2009-125 is attached as Exhibit A and
11 incorporated herein by reference.

12
13 **ADVISEMENT AND WAIVERS**

14 5. Respondent has carefully read, and understands the charges and allegations in
15 Accusation No. CC-2009-125. Respondent has also carefully read, and understands the effects of
16 this Stipulated Settlement and Disciplinary Order.

17 6. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
19 his own expense; the right to confront and cross-examine the witnesses against him; the right to
20 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
21 the attendance of witnesses and the production of documents; the right to reconsideration and
22 court review of an adverse decision; and all other rights accorded by the California
23 Administrative Procedure Act and other applicable laws.

24 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
25 every right set forth above.

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CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. CC-2009-125.

9. Respondent agrees that his Optometry Certificate of Registration is subject to discipline and he agrees to be bound by the Board's Probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

10. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

11. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

SEVERABILITY CLAUSE

13. Each condition of Probation contained herein is a separate and distinct condition. If any of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order and all other applicants thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

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14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Optometrist License No. 10198 issued to Respondent Brent Lee Gibson (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on Probation for three (3) years on the following terms and conditions.

1. **Obey All Laws** – Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of optometry in California. Respondent shall notify the Board in writing within three calendar days of any incident resulting in his arrest, or charges filed against, or a citation issued against, Respondent.

2. **Quarterly Reports** – Respondent shall submit Quarterly Reports of compliance under penalty of perjury, on forms to be provided, to the Probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of Probation and shall result in the filing of an accusation and/or a Petition to Revoke Probation against Respondent's Optometrist License. Quarterly Report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly Reports are due for each year of Probation and the entire length of Probation as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

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Failure to submit complete and timely reports shall constitute a violation of Probation.

3. **Probation Monitoring Program** – Respondent shall comply with requirements of the Board appointed Probation Monitoring Program, and shall, upon reasonable request, report to or appear to a venue as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Reports, Identification Update Reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent shall provide to the Board the names, physical addresses, mailing addresses, telephone numbers, and e-mail addresses of all employers, supervisors, managers, and contractors and shall give specific, written consent that the Respondent authorizes the Board and its representatives and the employers, supervisors, managers, and contractors to communicate regarding the Respondent's work status, performance, and monitoring.

Monitoring includes, but is not limited to, any violation of any Probationary term and condition.

Respondent is encouraged to contact the Board's Probation Program at any time he/she has a question or concern regarding his terms and conditions of Probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of Probation and will result in the filing of an Accusation and/or a Petition to Revoke Probation against Respondent's Optometrist license.

4. **Probation Monitoring Costs** – All costs incurred for Probation monitoring during the entire Probation shall be paid by the Respondent. The monthly cost may be adjusted

1 as expenses are reduced or increased. Respondent's failure to comply with all terms and
2 conditions may also cause this amount to be increased.

3 All payments for costs are to be sent directly to the Board of Optometry and must be
4 received by the date(s) specified (Periods of tolling will not toll the Probation monitoring costs.
5 incurred).

6 If Respondent is unable to submit costs for any month, he shall be required, instead, to
7 submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to
8 submit the costs, including payment amount(s). Supporting documentation and evidence of
9 why the Respondent is unable to make such payment(s) must accompany this submission.
10

11 Respondent understands that failure to submit costs timely is a violation of Probation and
12 submission of evidence demonstrating financial hardship does not preclude the Board from
13 pursuing further disciplinary action. However, Respondent understands that by providing
14 evidence and supporting documentation of financial hardship it may delay further Disciplinary
15 Action.
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17 In addition to any other Disciplinary Action taken by the Board, an unrestricted license will
18 not be issued at the end of the Probationary period and the Optometrist license will not be
19 renewed, until such time as all Probation Monitoring Costs have been paid. The filing of
20 bankruptcy by the Respondent shall not relieve the Respondent of his responsibility to
21 reimburse the Board for costs incurred.
22

23 5. Function as an Optometrist – Respondent shall function as an Optometrist for
24 a minimum of 60 hours per month for the entire term of his Probation period.

25 6. Notice to Employer – Respondent shall provide to the board the names,
26 physical addresses, mailing addresses, and telephone number of all employers and supervisors
27 and shall give specific, written consent that the Respondent authorizes the board and the
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employers and supervisors to communicate regarding the Respondent's work status, performance and monitoring.

Respondent shall be required to inform his employer, and each subsequent employer during the Probation period, of the discipline imposed by this decision by providing his supervisor and director and all subsequent supervisors and directors with a copy of the Decision and Order, and the Accusation in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

The employer will then inform the Board, in writing, that he is aware of the Discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to obtain additional forms if needed.

7. **Notice to Patients** – During the period of Probation, Respondent shall post a notice in a prominent place in his office that is conspicuous and readable to the public. The notice shall state the Respondent's Optometrist license is on Probation and shall contain the telephone number of the State Board of Optometry. Respondent shall also post a notice containing this information prominently on any website related to his Practice of Optometry. The above-described notices shall be approved by the Board within 30 days of the effective date of this decision.

8. **Changes of Employment or Residence** – Respondent shall notify the Board, and appointed Probation Monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes, but is not limited to, applying for employment, termination or resignation from employment, change in employment status, and change in supervisors, administrators or directors.

Respondent shall also notify his Probation Monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. boxes are accepted for mailing

1 purposes; however the Respondent must also provide his physical residence address as well.

2 9. **Cost Recovery** – Respondent shall pay to the Board a sum not to exceed the
3 costs of the investigation and prosecution of this case. That sum shall be \$5,700.00 and shall
4 be paid in full directly to the Board, in a Board approved payment plan, within 6 months from
5 the end of the Probation term. Cost recovery will not be tolled.

6 If Respondent is unable to submit costs timely, he shall be required instead to submit an
7 explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he
8 will be able to submit the costs, including payment amount(s). Supporting documentation and
9 evidence of why the Respondent is unable to make such payment(s) must accompany this
10 submission.
11

12 Respondent understands that failure to submit costs timely is a Violation of Probation and
13 submission of evidence demonstrating financial hardship does not preclude the Board from
14 pursuing further disciplinary action. However, Respondent understands that by providing
15 evidence and supporting documentation of financial hardship may delay further Disciplinary
16 Action.
17

18 Consideration to financial hardship will not be given should Respondent violate this term
19 and condition, unless an unexpected AND unavoidable hardship is established from the date of
20 this order to the date payment(s) is due. The filing of bankruptcy by the Respondent shall not
21 relieve the Respondent of his responsibility to reimburse the Board for these costs.

22 10. **Take and Pass Licensure Examination(s)** – Respondent shall take and pass
23 the California Laws and Regulations Examination (CLRE). Respondent shall pay the
24 established examination fees. If Respondent has not taken and passed the examination within
25 twelve months from the effective date of this decision, Respondent shall be considered to be in
26 Violation of Probation.
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11. **Community Service** – Within 30 days of the effective date of this Decision, Respondent shall submit to the Board, for its prior approval, a community service program in which Respondent provides free professional services on a regular basis to a community of charitable facility or agency, amounting to a minimum of 8 hours per month of Probation. Such services shall begin and end within the time period as designated by the Board.

12. **Valid License Status** – Respondent shall maintain a current, active and valid license for the entire length of the Probation period. Failure to pay all fees and meet CE requirements prior to his license expiration date shall constitute a Violation of Probation.

13. **Tolling for Out-of-State Residence or Practice** – Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the Probation period but will not toll the Cost Recovery requirement, nor the Probation Monitoring Costs incurred. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 days, upon his return to California and prior to the commencement of any employment where representation as an Optometrist is/was provided.

Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing in another state of the United States and is on active Probation with the licensing authority of that state, in which case the two year period shall begin on the date Probation is completed or terminated in that state.

14. **License Surrender** – During Respondent's term of Probation, if he ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the condition of Probation, Respondent may surrender his license to the Board. The Board reserves the right to

1 evaluate Respondent's request and exercise its discretion whether to grant the request or to
2 take any other action deemed appropriate and reasonable under the circumstances, without
3 further hearing. Upon formal acceptance of the tendered license and wall certificate,

4 Respondent will no longer be subject to the conditions of Probation. All costs incurred (i.e.,
5 Cost Recovery and Probation Monitoring) are due upon Reinstatement.

6 Surrender of Respondent's license shall be considered a Disciplinary action and shall
7 become a part of Respondent's license history with the Board.
8

9 15. **Violation of Probation** – If Respondent violates any term of the Probation in
10 any respect, the Board, after giving Respondent notice and the opportunity to be heard, may
11 revoke Probation and carry out the Disciplinary Order that was stayed. If a Petition to Revoke
12 Probation is filed against Respondent during Probation, the Board shall have continuing
13 jurisdiction and the period of Probation shall be extended until the matter is final. No petition
14 for modification of penalty shall be considered while there is an accusation or petition to
15 Revoke Probation or other penalty pending against Respondent.
16

17 16. **Completion of Probation** – Upon successful completion of Probation,
18 Respondent's license shall be fully restored. Respondent may Petition for Early Termination of
19 Probation after one (1) year.

20 17. **Abstention from Use of Mood Altering Substances** – Respondent shall
21 completely abstain from the possession or use of alcohol, any and all other mood altering
22 drugs, substances and their associated paraphernalia, except when the drugs are lawfully
23 prescribed by a licensed practitioner as part of a documented medical treatment.
24

25 Respondent shall execute a release authorizing the release of pharmacy and prescribing
26 records as well as physical and mental health medical records. Respondent shall also provide
27 information of treating physicians, counselors or any other treating professional as requested
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1 by the Board.

2 Respondent shall ensure that he is not in the presence of or in the same physical location as
3 individuals, who are using illegal substances, even if Respondent is not personally ingesting
4 the drug(s). Any positive result that registers over the established laboratory cutoff level shall
5 constitute a Violation of Probation and shall result in the filing of an Accusation and/or a
6 Petition to Revoke Probation against Respondent's Optometrist license. Respondent also
7 understands and agrees that any positive result that registers over the established laboratory
8 cutoff level shall be reported to each of Respondent's employers.
9

10 18. **Biological Fluid Testing** – Respondent, at his expense, shall immediately
11 participate in random testing, including but not limited to biological fluid testing (i.e. urine,
12 blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by
13 the Board. The length of time shall be for the entire Probation period. The Respondent will be
14 randomly drug tested at the frequency outlined by the Department of Consumer Affairs
15 Uniform Standards for Substance Abuse #4.
16

17 Respondent shall be required to make daily contact to determine if he is required to submit
18 a specimen for testing, including weekends and holidays, at a lab approved by the Board.
19 Board representatives may also appear unannounced, at any time to collect a specimen. All
20 collections will be observed.

21 At all times Respondent shall fully cooperate with the Board or any of its representatives,
22 and shall, when directed, appear for testing as requested and submit to such tests and samples
23 for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled
24 substances. All alternative testing sites, due to vacation or travel outside of California, must be
25 approved by the Board prior to the vacation or travel.
26

27 If Respondent is unable to provide a specimen in a reasonable amount of time from the
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1 request, Respondent understands that, while at the work site, any Board representative may
2 request from the supervisor, manager or director on duty to observe Respondent in a manner
3 that does not interrupt or jeopardize patient care in any manner until such time Respondent
4 provides a specimen acceptable to the Board.

5 If Respondent tests positive for a prohibited substance per his Probationary order,
6 Respondent's license shall be automatically suspended. The Board will contact the
7 Respondent and his employers, supervisors, managers, work site monitors, and contractors and
8 notify them that Respondent's license has been suspended as a result of a positive test.

9 Thereafter, the Board may contact the specimen collector, laboratory, Respondent, treating
10 physician, treatment provider and support group facilitators to determine whether the positive
11 test is in fact evidence of prohibited use. If the Board determines the positive test is not
12 evidence of prohibited use, the Board shall immediately reactivate the license and inform the
13 Respondent and others previously contacted, that the license is no longer suspended.
14

15 Failure to submit to testing on the day requested, or appear as requested by any Board
16 representative for testing, as directed, shall constitute a violation of Probation and shall result
17 in the filing of an Accusation and/or a Petition to Revoke Probation against Respondent's
18 Optometrist license.
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20 19. **Participate in Group Support Meetings** – Respondent shall attend at least one
21 (1), but no more than five (5), 12-step recovery meetings or equivalent (e.g., Narcotics
22 Anonymous, Alcoholics Anonymous, etc.) during each week of Probation, as approved or
23 directed by the Board. Respondent shall submit dated and signed documentation confirming
24 such attendance to the Board during the entire period of Probation.
25

26 20. **Alcohol And Drug Treatment**—Respondent, at his expense shall successfully
27 complete a treatment regime at a recognized and established program in California of at least
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1 six months duration and approved by the Board. The treatment program shall be successfully
2 completed within the first nine months of Probation. The program director, psychiatrist or
3 psychologist shall confirm that Respondent has complied with the requirement of this decision
4 and shall notify the Board immediately if he/she believes the Respondent cannot safely
5 practice. Respondent shall execute a release authorizing divulgence of this information to the
6 Board.

7 Respondent shall inform the program director, psychiatrist or psychologist of his
8 Probationary status with the Board, and shall cause that individual to submit monthly reports to
9 the Board providing information concerning Respondent's progress and prognosis. Such
10 reports shall include results of Biological Fluid Testing.

11 Positive results shall be reported immediately to the Board and shall be used in
12 Administrative Discipline.

13
14 21. **Employment Limitations** – Respondent shall not work in any health care
15 setting as a supervisor of Optometrists. The Board may additionally restrict Respondent from
16 supervising technicians and/or unlicensed assistive personnel on a case-by-case basis.

17 Respondent shall not work as a faculty member in an approved School of Optometry or as
18 an instructor in a Board approved continuing education program.

19 Respondent shall work only on a regularly assigned, identified and predetermined
20 worksite(s) and shall not work in a float capacity.

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1 ACCEPTANCE

2 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
3 stipulation and the effect it will have on my Optometry Certificate of Registration. I enter into
4 this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and
5 agree to be bound by the Decision and Order of the Board.

6
7 DATED: 5-9-2011

Brent Lee Gibson
BRENT LEE GIBSON
Respondent

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9
10 ENDORSEMENT

11 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
12 submitted for consideration by the Board.

13
14
15 Dated: May 13, 2011

Respectfully submitted,

16 KAMALA D. HARRIS
Attorney General of California
17 GLORIA A. BARRIOS
Supervising Deputy Attorney General

18 Langston M. Edwards
19 Deputy Attorney General
20 Attorneys for Complainant

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11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 **BRENT LEE GIBSON**

13 Respondent.

Case No. CC-2009-125

OAH No. L-2010091115

PETITION FOR RECONSIDERATION

(Government Code section 11521(a))

15
16 Mona Maggio (Petitioner), solely in her official capacity as the Executive Officer of the
17 State Board of Optometry (Board), pursuant to Government Code section 11521(a), respectfully
18 petitions for reconsideration of the Board's Decision in this case dated April 20, 2011, which
19 shall become effective May 20, 2011. The grounds for this petition are that the Stipulated
20 Decision and Order does not provide adequate notice of the disciplinary action being taken in this
21 matter with respect to the Brent Lee Gibson's (Respondent) Board of Optometry Certificate of
22 Registration No. 10198 and for other reasons as set forth below.

23 **I. PROCEDURAL BACKGROUND**
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25 On or about September 16, 1993, the Board of Optometry issued Optometry Certificate of
26 Registration No. 10198 to Respondent. The Optometry Certificate of Registration was in full
27 force and effect at all times relevant to the charges brought in Accusation No. CC-2009-125 and
28 will expire on October 31, 2011, unless renewed.

1 Accusation No. CC-2009-125 and all other statutorily required documents were properly
2 served on Respondent on August 25, 2010. Respondent timely filed his Notice of Defense
3 contesting the Accusation. A copy of Accusation No. CC-2009-125 is attached as Exhibit A and
4 incorporated herein by reference.

5 On or around September 9, 2010, the Board informed its counsel that any settlement terms
6 with the Respondent must include a term revoking Respondent's license, which would be stayed
7 pending three (3) years of probation with terms and conditions to be determined in accordance
8 with the Board's Disciplinary Guidelines. [Declaration of Langston M. Edwards (Edwards Decl.)
9 at ¶ 2] Then, later that day on or around September 9, 2010, the Board's counsel informed the
10 Respondent that terms of Respondent's probation would include a term revoking Respondent's
11 license, which would be stayed pending three years of probation with terms and conditions to be
12 determined in accordance with the Board's Disciplinary Guidelines. (Edwards Decl. at ¶ 3).

13 On or around March 14, 2011, Respondent reviewed and accepted the terms of the
14 Stipulated Settlement and Disciplinary Order (Settlement) wherein, Respondent voluntarily and
15 knowingly agreed to be bound by the Decision and Order of the Board. A copy of the Settlement
16 and Disciplinary Order is attached as Exhibit B and incorporated herein by reference.

17 Although the Respondent was made aware throughout settlement discussions that terms of
18 probation would include revoking Respondent's license (stayed pending 3 years of probation),
19 that specific provision was inadvertently omitted from the final executed Settlement. Also
20 omitted inadvertently was a severability clause which would permit each term of the Settlement
21 to be independently enforceable.

22 On or around April 20, 2011, the Board adopted the Settlement in its Decision and Order
23 (Decision), which "shall become effective May 20, 2011." The Settlement adopted by the Board
24 does not include the Disciplinary provision or the Severability Clause referenced above.
25 Petitioner now requests that the Board grant the Petition for Reconsideration and modify the
26 Settlement to include the above-reference provisions. This will enable the Board to take
27 Disciplinary action against the Respondent's license, provide adequate notice to the Respondent
28 relating the nature and duration of license discipline status and ensure the enforceability of the
provisions therein.

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II. RECONSIDERATION IS PERMISSIBLE PURSUANT TO
GOVT. CODE §11521 (a)

Govt. Code §11521 subdivision (a) states, in pertinent part, "[t]he agency may order a reconsideration of all or part of the case on its own motion or on petition of any party." The power to order reconsideration "shall expire 30 days after the delivery or mailing of a decision to respondent."

In this case, the Petitioner properly moves for reconsideration on its own motion. Because the Decision and Order was only recently delivered to Respondent by certified and regular mail on or around April 20, 2011, the power to order reconsideration has not yet expired and the Board maintains the power to make such orders. The Petitioner in this case requests reconsideration the Decision and Order in order to permit the inclusion of the inadvertently omitted disciplinary provision and the severability clause.

III. DISCIPLINARY PROVISION

Stipulated Settlement and Disciplinary Orders in matters such as the one now before the Board include a provision setting forth the nature of the Disciplinary Action being taken with respect to a Respondent's license and the duration of the Respondent's required compliance with Board's probationary terms and conditions. Such provisions are ordinarily set established using the following language:

'IT IS HEREBY ORDERED that [license number] issued to [Respondent] is revoked. However, the revocation is stayed and [Respondent] is placed on probation for [number] years on the following terms and conditions.'

These provisions are necessary, if not essential, for the enforceability of any Disciplinary Action taken by the Board against a Respondent's license. The absence of such a provision renders action against a licensee unenforceable, and the public remains at risk of harm of the violative conduct.

1 In this case, the Disciplinary provision was inadvertently omitted from the final
2 Settlement. Petitioner requests that the current Decision be reconsidered and the Board grant
3 Petitioner's request to modify the Settlement to include the Disciplinary provision as set forth on
4 p. 4, lines 6-8 of the revised Settlement, attached hereto as **Exhibit C**.

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6 IV. SEVERABILITY CLAUSE

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8 Stipulated Settlement and Disciplinary Orders also include a Severability Clause which
9 allows for the terms of the Settlement to be independent of one another, so that if a term is
10 deemed unenforceable by a court, the Settlement as a whole will not be deemed unenforceable.
11 The Severability Clause is required for all Decisions and Stipulated Settlements where there are
12 conditions of probation, in order to avoid the possibility of all probation conditions being repealed
13 upon appeal. Such provisions are ordinarily established using the following language:

14
15 *Each condition of probation is a separate and distinct condition. If any of the*
16 *Order, or any application thereof, is declared unenforceable in whole, in part, or to*
17 *any extent, the remainder of the Order and all other applicants thereof, shall not be*
18 *affected. Each condition of this Order shall separately be valid and enforceable to*
19 *the fullest extent permitted by law.*

20
21 In this case, the Severability Clause was inadvertently omitted from the final Settlement.
22 Petitioner requests that the current Decision be reconsidered and the Board grant Petitioner's
23 request to modify the Settlement to include the Severability Clause as set forth on p. 3, lines 22 -
24 26 and p. 4, lines 1-3 of the Revised Settlement, attached hereto as **Exhibit C**.

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V. ADDITIONAL TERMS SUBJECT TO RECONSIDERATION

In addition to the provisions referenced above, Petitioner requests that the Board grant reconsideration of the Settlement by permitting the addition and/or modification of the following conditions:

- **Removed from Condition #3 [Probation Monitoring Program]:**

"Board agreement: No work site monitor required, but Respondent must inform employer that he's on probation. He shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the Board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring. Reports are required from contract employers where Respondent works 24 hours per week or more, when requested by the Board."

Respondent MUST designate 1 office as a primary place of practice. He must send the Board a Statement of Licensure (SOL) for each office where he works regularly (recurring employment). Exception: If Respondent is performing a one-time, fill-in position as an OD then Respondent does not need to provide a SOL. (Statement of Licensure form attached as Exhibit B)."

- **Removed from Condition #4 [Probation Monitoring Costs]:**

"Board agreement: Probation monitoring costs are \$100 per month."

- **Replace Condition #5 [Function as an Optometrist] with the following:**

"Respondent shall function as an Optometrist for a minimum of 60 hours per month for the entire term of his Probation period."

- **Removed from Condition #6 [Notice to Employer]:**

"All reports completed by the employer must be submitted from the employer directly to the Board."

Board agreement: In light of Respondent's completion of drug rehabilitation program, this condition is limited to employers for whom Respondent works 24 hours a week or more. In order for this condition to become effective, Respondent must provide a Certificate of Completion or a letter from a program on their letterhead with an original signature (no copies)."

- **Removed from Condition #10 [Take and Pass Licensure Examination]:**

"Respondent shall take and pass the licensure exam(s) currently required of new applicants for the license possessed by Respondent. Respondent shall not practice until such time as respondent has taken and passed these examinations. Respondent shall pay the established examination fees. If respondent has not taken and passed the examination within twelve months from the effective date of this decision, respondent shall be considered to be in violation of probation."

1 *Board agreement: Respondent will only have to take the California Laws and Regulations*
2 *Examination (CLRE)."*

3 • Replace Condition #18 [Biological Fluid Testing] with the following:
4 "Respondent, at his expense, shall immediately participate in random testing, including but
5 not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle
6 testing, or any drug screening program approved by the Board. The length of time shall be
7 for the entire probation period. The Respondent will be randomly drug tested at the
8 frequency outlined by the Department of Consumer Affairs Uniform Standards for
9 Substance Abuse #4.

10 Respondent shall be required to make daily contact to determine if he is required to submit
11 a specimen for testing, including weekends and holidays, at a lab approved by the Board.
12 Board representatives may also appear unannounced, at any time to collect a specimen. All
13 collections will be observed.

14 At all times Respondent shall fully cooperate with the Board or any of its representatives,
15 and shall, when directed, appear for testing as requested and submit to such tests and
16 samples for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other
17 controlled substances. All alternative testing sites, due to vacation or travel outside of
18 California, must be approved by the Board prior to the vacation or travel.

19 If Respondent is unable to provide a specimen in a reasonable amount of time from the
20 request, Respondent understands that, while at the work site, any Board representative may
21 request from the supervisor, manager or director on duty to observe Respondent in a
22 manner that does not interrupt or jeopardize patient care in any manner until such time
23 Respondent provides a specimen acceptable to the Board.

24 If Respondent tests positive for a prohibited substance per his probationary order,
25 Respondent's license shall be automatically suspended. The Board will contact the
26 Respondent and his employers, supervisors, managers, work site monitors, and contractors
27 and notify them that Respondent's license has been suspended as a result of a positive test.
28 Thereafter, the Board may contact the specimen collector, laboratory, Respondent, treating
physician, treatment provider and support group facilitators to determine whether the
positive test is in fact evidence of prohibited use. If the Board determines the positive test
is not evidence of prohibited use, the Board shall immediately reactivate the license and
inform the Respondent and others previously contacted, that the license is no longer
suspended.

Failure to submit to testing on the day requested, or appear as requested by any Board
representative for testing, as directed, shall constitute a violation of probation and shall
result in the filing of an accusation and/or a petition to revoke probation against
Respondent's optometrist license."

• Remove from Condition #20:
"SPECIALTY CONDITIONS (This condition is dependent upon the violation
committed)"

1 • Add Condition #21 [**Employment Limitations**]:

2 "Respondent shall not work in any health care setting as a supervisor of optometrists. The
3 Board may additionally restrict Respondent from supervising technicians and/or unlicensed
 assistive personnel on a case-by-case basis.

4 Respondent shall not work as a faculty member in an approved school of optometry or as
5 an instructor in a Board approved continuing education program.

6 Respondent shall work only on a regularly assigned, identified and predetermined
7 worksites(s) and shall not work in a float capacity."

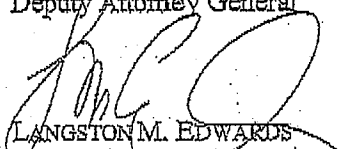
8 CONCLUSION

9 Based on the foregoing, Petitioner requests that the Board grant the Petition for
10 Reconsideration and permit modification of the current Decision and Order to include the
11 Disciplinary Provision, Severability Clause, and the additional changes described in section V
12 above.

13
14 Dated: May 4, 2011

Respectfully Submitted,

15 KAMALA D. HARRIS
16 Attorney General of California
17 GLORIA A. BARRIOS
18 Deputy Attorney General

19 
20 LANGSTON M. EDWARDS
21 Deputy Attorney General
22 Attorneys for Complainant
23
24
25
26
27
28

BEFORE THE
BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:)

) Agency Case No. CC 2009-125

BRENT LEE GIBSON, O.D.)

21616 Califa St. #308)

Woodland Hills, CA 91367)

Certificate of Registration No. OPT 10198)

Respondent.)

) OAH No. L-2010091115

DECISION and Order

The attached Stipulated Decision and Disciplinary Order is hereby adopted by the Board of Optometry, Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective May 20, 2011

It is so ORDERED April 20, 2011



LEE A. GOLDSTEIN, O.D. MPA
PRESIDENT
BOARD OF OPTOMETRY

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 LANGSTON M. EDWARDS
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4 State Bar No. 237926
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5 Los Angeles, CA 90013
Telephone: (213) 620-6343
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
9 STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. CC-2009-125

11 BRENT LEE GIBSON

OAH No. L-2010091115

12 Respondent.

13 STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14
15
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
17 entitled proceedings that the following matters are true:

18
19
20 PARTIES

21 1. Mona Maggio ("Complainant") is the Executive Officer of the State Board of
22 Optometry ("Board"). Complainant brought this action solely in her official capacity and is
23 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
24 Langston M. Edwards, Deputy Attorney General.

25 2. Respondent Brent Lee Gibson ("Respondent") is representing himself in this
26 proceeding and has chosen not to exercise his right to be represented by counsel.

27 3. On or about September 16, 1993, the Board of Optometry issued Optometry
28 Certificate of Registration No. 10198 to Respondent. The Optometry Certificate of Registration

1 was in full force and effect at all times relevant to the charges brought in Accusation No. CC-
2 2009-125 and will expire on October 31, 2011, unless renewed.

3
4 JURISDICTION

5 4. Accusation No. CC-2009-125 was filed before the Board and is currently pending
6 against Respondent. The Accusation and all other statutorily required documents were properly
7 served on Respondent on August 25, 2010. Respondent timely filed his Notice of Defense
8 contesting the Accusation. A copy of Accusation No. CC-2009-125 is attached as Exhibit A and
9 incorporated herein by reference.

10
11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, and understands the charges and allegations in
13 Accusation No. CC-2009-125. Respondent has also carefully read, and understands the effects of
14 this Stipulated Settlement and Disciplinary Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 //

25 //

26 //

27 //

28 //

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. CC-2009-125.

9. Respondent agrees that his Optometry Certificate of Registration is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

10. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

11. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

1. Obey all laws – Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of optometry in California. Respondent shall notify the Board in writing within three days of any incident resulting in his arrest, or charges filed against, or a citation issued against, Respondent.

2. **Quarterly reports** – Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned by the Board.

Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license. Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

3. **Probation Monitoring Program** – Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a venue as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Reports, Identification Update Reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent shall provide to the Board the names, physical addresses, mailing addresses, telephone numbers, and e-mail addresses of all employers, supervisors, managers, and contractors and shall give specific, written consent that the Respondent authorizes the Board and its representatives and the employers, supervisors, managers, and contractors to communicate regarding the Respondent's work status, performance, and monitoring.

Monitoring includes, but is not limited to, any violation of any probationary term and condition.

Respondent is encouraged to contact the Board's Probation Program at any time he/she has a question or concern regarding his terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against Respondent's Optometrist license.

Board agreement: No work site monitor required, but Respondent must inform employer that he's on probation. He shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the Board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring. Reports are required from contract employers where Respondent works 24 hours per week or more, when requested by the Board.

Respondent MUST designate 1 office as a primary place of practice. He must send the Board a Statement of Licensure (SOL) for each office where he works regularly (recurring employment). Exception: If Respondent is performing a one-time, fill-in position as an OD then Respondent does not need to provide a SOL. (Statement of Licensure form attached as Exhibit B)

4. Probation Monitoring Costs – All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

1 All payments for costs are to be sent directly to the Board of Optometry and must be
2 received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs
3 incurred.)

4 If Respondent is unable to submit costs for any month, he shall be required, instead, to
5 submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to
6 submit the costs, including payment amount(s). Supporting documentation and evidence of
7 why the Respondent is unable to make such payment(s) must accompany this submission.

8 Respondent understands that failure to submit costs timely is a violation of probation and
9 submission of evidence demonstrating financial hardship does not preclude the Board from
10 pursuing further disciplinary action. However, Respondent understands that by providing
11 evidence and supporting documentation of financial hardship it may delay further disciplinary
12 action.

13 In addition to any other disciplinary action taken by the Board, an unrestricted license will
14 not be issued at the end of the probationary period and the optometrist license will not be
15 renewed, until such time as all probation monitoring costs have been paid. The filing of
16 bankruptcy by the Respondent shall not relieve the Respondent of his responsibility to
17 reimburse the Board for costs incurred.

18 *Board agreement: Probation monitoring costs are \$100 per month.*

19 5. **Function as an Optometrist** – Respondent shall function as an optometrist for
20 a minimum of 24 hours per week for the entire term of his probation period.

21 Respondent may substitute successful completion of a minimum of thirty (30) additional
22 continuing education hours, beyond that which is required for license renewal, for each 8
23 months of employment required. Respondent shall submit proof to the Board of successful
24 completion of all continuing education requirements. Respondent is responsible for paying all
25

costs associated with fulfilling this term and condition of probation.

Board agreement: Board agreed to change this to 40 hours per month during probation period.

6. **Notice to Employer** – Respondent shall provide to the board the names, physical addresses, mailing addresses, and telephone number of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance and monitoring.

Respondent shall be required to inform his employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the Statement of Issues in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

The employer will then inform the Board, in writing, that he/she is aware of the discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to obtain additional forms if needed. All reports completed by the employer must be submitted from the employer directly to the Board.

Board agreement: In light of Respondent's completion of drug rehabilitation program, this condition is limited to employers for whom Respondent works 24 hours a week or more. In order for this condition to become effective, Respondent must provide a Certificate of Completion or a letter from a program on their letterhead with an original signature (no copies).

7. **Notice to Patients** – During the period of probation, Respondent shall post a notice in a prominent place in his office that is conspicuous and readable to the public. The notice shall state the Respondent's Optometrist license is on probation and shall contain the telephone number of the State Board of Optometry. Respondent shall also post a notice

1 containing this information prominently on any website related to his practice of Optometry.

2 The above-described notices shall be approved by the board within 30 days of the effective
3 date of this decision.

4 8. **Changes of Employment or Residence** – Respondent shall notify the Board,
5 and appointed probation monitor, in writing, of any and all changes of employment, location,
6 and address within 14 days of such change. This includes but is not limited to applying for
7 employment, termination or resignation from employment, change in employment status, and
8 change in supervisors, administrators or directors.

9 Respondent shall also notify his probation monitor AND the Board IN WRITING of any
10 changes of residence or mailing address within 14 days. P.O. boxes are accepted for mailing
11 purposes; however the Respondent must also provide his physical residence address as well.
12

13 9. **Cost Recovery** – Respondent shall pay to the Board a sum not to exceed the
14 costs of the investigation and prosecution of this case. That sum shall be \$5,700.00 and shall
15 be paid in full directly to the Board, in a Board approved payment plan, within 6 months from
16 the end of the probation term. Cost recovery will not be tolled.
17

18 If Respondent is unable to submit costs timely, he shall be required instead to submit an
19 explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he
20 will be able to submit the costs, including payment amount(s). Supporting documentation and
21 evidence of why the Respondent is unable to make such payment(s) must accompany this
22 submission.
23

24 Respondent understands that failure to submit costs timely is a violation of probation and
25 submission of evidence demonstrating financial hardship does not preclude the Board from
26 pursuing further disciplinary action. However, Respondent understands that by providing
27 evidence and supporting documentation of financial hardship may delay further disciplinary
28

action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due. The filing of bankruptcy by the Respondent shall not relieve the Respondent of his responsibility to reimburse the Board for these costs.

10. **Take and Pass Licensure Examination(s)** – (A) Respondent shall take and pass the licensure exam(s) currently required of new applicants for the license possessed by Respondent. Respondent shall not practice until such time as respondent has taken and passed these examinations. Respondent shall pay the established examination fees. If respondent has not taken and passed the examination within twelve months from the effective date of this decision, respondent shall be considered to be in violation of probation.

Respondent shall take and pass the California Laws and Regulations Examination (CLRE). Respondent shall pay the established examination fees. If respondent has not taken and passed the examination within twelve months from the effective date of this decision, respondent shall be considered to be in violation of probation.

Board agreement: Respondent will only have to take the California Laws and Regulations Examination (CLRE).

11. **Community Service** – Within 30 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which respondent provides free professional services on a regular basis to a community of charitable facility or agency, amounting to a minimum of 8 hours per month of probation. Such services shall begin and end within the time period as designated by the Board.

12. **Valid License Status** – Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CB requirements

prior to his license expiration date shall constitute a violation of probation.

13. **Tolling for Out-of-State Residence or Practice** – Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 days, upon his return to California and prior to the commencement of any employment where representation as an optometrist is/was provided.

Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

14. **License Surrender** – During Respondent's term of probation, if he ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the condition of probation, Respondent may surrender his license to the board. The Board reserves the right to evaluate Respondent's request and exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon reinstatement.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board.

15. **Violation of Probation** – If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.

16. **Completion of Probation** – Upon successful completion of probation, Respondent's license shall be fully restored.

Board agreement: Probation will be for 3 years. Respondent can petition for early termination of probation after 1 year.

17. **Abstention from Use of Mood Altering Substances** – Respondent shall completely abstain from the possession or use of alcohol, any and all other mood altering drugs, substances and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment.

Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professional as requested by the Board.

Respondent shall ensure that he is not in the presence of or in the same physical location as individuals, who are using illegal substances, even if Respondent is not personally ingesting the drug(s). Any positive result that registers over the established laboratory cutoff level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license. Respondent also

1 understands and agrees that any positive result that registers over the established laboratory
2 cutoff level shall be reported to each of Respondent's employers.

3 *Board agreement: Respondent must abstain from ALL substances – alcohol and drugs.*

4 18. **Biological Fluid Testing** – Respondent, at his expense, shall participate in
5 random testing, including but not limited to biological fluid testing (i.e., urine, blood, saliva),
6 breathalyzer, hair follicle testing, or any drug screening program approved by the Board. The
7 length of time shall be for the entire probation period. The Respondent will be randomly drug
8 tested at least 104 times during the first year of probation, and at any time as directed by the
9 Board. After the first year, licensees who are practicing shall be randomly drug tested at least
10 50 times per year, and at any time as directed by the Board.
11

12 *Board agreement: The number of times will not exceed 100 in the first year and must be*
13 *random testing.*

14 Respondent shall be required to make daily contact to determine if he is required to submit
15 a specimen for testing, including weekends and holidays, at a lab approved by the Board.
16 Board representatives may also appear unannounced, at any time to collect a specimen. All
17 collections will be observed.
18

19 At all times Respondent shall fully cooperate with the Board or any of its representatives,
20 and shall, when directed, appear for testing as requested and submit to such tests and samples
21 for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled
22 substances. All alternative testing sites, due to vacation or travel outside of California, must be
23 approved by the Board prior to the vacation or travel.
24

25 If Respondent is unable to provide a specimen in a reasonable amount of time from the
26 request, Respondent understands that, while at the work site, any Board representative may
27 request from the supervisor, manager or director on duty to observe Respondent in a manner
28

1 that does not interrupt or jeopardize patient care in any manner until such time Respondent
2 provides a specimen acceptable to the Board.

3 If Respondent tests positive for a prohibited substance per his probationary order,
4 Respondent's license shall be automatically suspended. The Board will contact the Respondent
5 and his employers, supervisors, managers, work site monitors, and contractors and notify them
6 that Respondent's license has been suspended as a result of a positive test. Thereafter, the
7 Board may contact the specimen collector, laboratory, Respondent, treating physician,
8 treatment provider and support group facilitators to determine whether the positive test is in
9 fact evidence of prohibited use. If the Board determines the positive test is not evidence of
10 prohibited use, the Board shall immediately reactivate the license and inform the Respondent
11 and others previously contacted, that the license is no longer suspended.
12

13 Failure to submit to testing on the day requested, or appear as requested by any Board
14 representative for testing, as directed, shall constitute a violation of probation and shall result
15 in the filing of an accusation and/or a petition to revoke probation against Respondent's
16 optometrist license.
17

18 19. Participate in Group Support Meetings – Respondent shall attend at least one
19 (1), but no more than five (5), 12-step recovery meetings or equivalent (e.g., Narcotics
20 Anonymous, Alcoholics Anonymous, etc.) during each week of probation, as approved or
21 directed by the Board. Respondent shall submit dated and signed documentation confirming
22 such attendance to the Board during the entire period of probation.
23

24 //

25 //

26 //

27 //

28

SPECIALTY CONDITIONS

(This condition is dependent upon the violation committed)

20. **Alcohol And Drug Treatment** - Respondent, at his expense shall successfully complete a treatment regime at a recognized and established program in California of at least six months duration and approved by the Board. The treatment program shall be successfully completed within the first nine months of probation. The program director, psychiatrist or psychologist shall confirm that Respondent has complied with the requirement of this decision and shall notify the Board immediately if he/she believes the Respondent cannot safely practice. Respondent shall execute a release authorizing divulgence of this information to the Board.

Respondent shall inform the program director, psychiatrist or psychologist of his probationary status with the Board, and shall cause that individual to submit monthly reports to the Board providing information concerning Respondent's progress and prognosis. Such reports shall include results of biological fluid testing.

Positive results shall be reported immediately to the Board and shall be used in administrative discipline.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Optometry Certificate of Registration. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: 3-14-2011

Brent L. Gibson
BRENT LEE GIBSON
Respondent

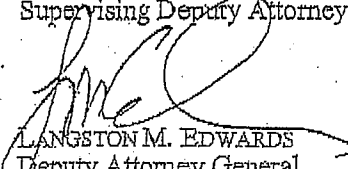
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
submitted for consideration by the Board

Dated: March 11, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General



LANGSTON M. EDWARDS
Deputy Attorney General
Attorneys for Complainant

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P.020/029

Exhibit A

Accusation No. CC-2009-125

1. EDMUND G. BROWN JR.
Attorney General of California
2. GLORIA A. BARRIOS
Supervising Deputy Attorney General
3. LANGSTON M. EDWARDS
Deputy Attorney General
4. State Bar No. 237926
300 So. Spring Street, Suite 1702
5. Los Angeles, CA 90013
Telephone: (213) 620-6343
6. Facsimile: (213) 897-2804
Attorneys for Complainant

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. CC-2009-125

BRENT LEE GIBSON
21616 Califa Street, Unit 308
Woodland Hills, CA 91367
Optometry Certificate of Registration No.
10198

ACCUSATION

Respondent.

Complainant alleges:

PARTIES

1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Optometry.

2. On or about September 16, 1993, the State Board of Optometry ("Board") issued Optometry Certificate of Registration Number 10198 to Brent Lee Gibson ("Respondent"). The Optometry Certificate of Registration was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2011, unless renewed.

//

//

//

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 states, in pertinent part:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere."

6. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to ... suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that ... the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question."

7. Section 3090 states:

"Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce

1 and administer this article as to license holders, and the board shall have all the powers granted in
2 this chapter for these purposes, including, but not limited to, investigating complaints from the
3 public, other licensees, health care facilities, other licensing agencies, or any other source
4 suggesting that an optometrist may be guilty of violating this chapter or any of the regulations
5 adopted by the board."

6 8. Section 3110 states:

7 "The Board may take action against any licensee who is charged with unprofessional
8 conduct ... In addition to other provisions of this article, unprofessional conduct includes, but is
9 not limited to; the following:

10
11 (k) Conviction of a felony or of any offense substantially related to the qualifications,
12 functions, or duties of an optometrist, in which event the record of the conviction shall be
13 conclusive evidence thereof.

14 (l) Administering to himself or herself any controlled substance or using any of the
15 dangerous drugs specified in Section 4022 ... in a manner, as to be dangerous or injurious to the
16 person ... holding a license under this chapter, or to any other person, or to the public, or, to the
17 extent that the use impairs the ability of the person ... holding a license to conduct with safety to
18 the public the practice authorized by the license."

19 20 REGULATORY PROVISIONS

21 9. California Code of Regulations, title 16, section 1517 states:

22 "For the purpose of denial, suspension, or revocation of the certificate of registration of an
23 optometrist pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act
24 shall be considered to be substantially related to the qualifications, functions, and duties of an
25 optometrist if to a substantial degree it evidences present or potential unfitness of an optometrist
26 to perform the functions authorized by his/her certificate of registration in a manner consistent
27 with the public health, safety, or welfare ..."

28 //

CONTROLLED SUBSTANCES

10. "Cocaine," is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(6) and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE(Criminal Convictions)

11. Respondent is subject to disciplinary action under section 490 and section 3110, subdivision (k), in that Respondent has been convicted of crimes substantially related to the qualifications, functions or duties of a licensed optometrist as follows:

a. On or about April 13, 2007, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Pen. Code section 484, subdivision (a) [theft], in the criminal proceeding entitled *The People of the State of California v. Brent Lee Gibson* (Super. Ct. Los Angeles County, 2007, No. PA058241). The Court sentenced Respondent to 2 days in jail and placed him on probation for a period of 36 months with certain terms and conditions. The circumstances surrounding the conviction are that on or about January 15, 2007 at approximately 10:55 a.m., while working at his place of employment, Respondent was observed taking an electric shaver from the store shelf and not returning it. Respondent did not pay for the electric shaver.

SECOND CAUSE FOR DISCIPLINE(Unprofessional Conduct/Dangerous Use of Controlled Substances – Crack Cocaine)

12. Respondent is subject to disciplinary action under section 3110, subdivision (l) in that Respondent committed acts constituting unprofessional conduct by using controlled substances to an extent or in a manner dangerous to herself, other persons, or the public or to the extent that such use of controlled substances impaired his ability to conduct with safety to the public the practice authorized by his license as follows:

1 a. The circumstances surrounding the conduct are that on or around January 22, 2007
2 while in his office at his place of employment, Respondent was observed on closed circuit
3 television smoking rock cocaine ("crack cocaine"). When officers from the Los Angeles Police
4 Department entered the Respondent's office, Respondent ducked behind his computer and
5 attempted to conceal both the crack pipe (in his hand) as well as the crack cocaine itself (in his
6 mouth). While taking the Respondent into custody, one officer noticed an "off white" substance
7 on the floor, later identified as "cocaine."

8 b. The Respondent was charged with one felony count of violating Health & Safety
9 code section 11350, subdivision (a) [possession of a controlled substance], in the criminal
10 proceeding entitled *The People of the State of California v. Brent Lee Gibson* (Super. Ct. Los
11 Angeles County, 2007, No. PA058241). The Respondent received a deferred entry of judgment
12 for 36 months, subject to terms and conditions, was ordered to pay \$440.00 in fines, fees and
13 penalties and to enroll in a drug education program.

14 c. Respondent admitted smoking crack cocaine on multiple occasions at various times
15 during the period of his licensure.

16
17 COST RECOVERY

18 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
19 administrative law judge to direct a licensee found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case.

22 //

23 //

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28 //

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Optometry Certificate of Registration Number 10198, issued to Brent Lee Gibson.
2. Ordering Brent Lee Gibson to pay the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 8/17/2010

Mona C. Maggio
MONA MAGGIO
Executive Officer
Board of Optometry
State of California
Complainant

LA2010502524
accusation.rtf

MAR/15/2011/TUE 11:08

P.027/029

Exhibit B

Application for Statement of Licensure

STATE AND CONSUMER SERVICES AGENCY

GOVERNOR EDMUND G. BROWN, JR.



STATE BOARD OF OPTOMETRY
2420 DEL PASO ROAD, SUITE 255, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry.ca.gov



OPTOMETRY

APPLICATION FOR STATEMENT OF LICENSURE

BOARD USE ONLY

Cashiering # _____

SOL # _____

FEE: \$40.00

Instructions: This application is to be completed by optometrists who are employed or contracted to practice optometry at a location that is not their principal place of practice. An optometrist's principal place of practice is the practice location to which the optometrist (OPT) license is issued. The Statement of Licensure must be conspicuously posted in the practice location to which it was issued. All applications and forms are available at the Board's website www.optometry.dca.ca.gov or upon request from the Board office.

Authority: Business and Professions (B&P) Code Section 3070 requires licensed optometrists to notify the Board of every location at which they practice or intend to practice optometry on a regular basis. B&P Code Section 3075 requires that optometrists post in each location where he or she practices optometry, in an area that is likely to be seen by all patients who use the office, his or her current license or other evidence of current license status issued by the board. California Code of Regulations Section 1506 further requires that where a licensee does not own a practice but practices optometry in a single office as an employee or a contractor, that office shall be his/her principal place of practice and where a licensee does not own a practice, singly or jointly with any others, but practices in two or more offices as an employee or a contractor, he/she shall inform the Board in writing of such offices and shall have a statement of licensure issued by the Board and conspicuously posted in each of such additional offices wherein he/she practices optometry as an employee, provided that: (1) He/she shall first apply for a statement of licensure for the exact location of the office wherein it is to be posted in lieu of his/her certificate of licensure; (2) He/she shall not post a statement of licensure in any office other than that as authorized by such statement of licensure and; (3) A statement of licensure shall not be altered or assigned.

A statement of licensure is to be immediately surrendered to the Board by the licensee to whom it is issued upon the occurrence of any of the following: (1) His/her certificate becomes expired, is suspended or is revoked; (2) His/Her employer terminates ownership of the practice or his/her employment to practice optometry in the office wherein he/she is authorized by a statement of licensure and; (3) The office wherein he/she is authorized by a statement of licensure becomes the only office wherein he/she is employed to practice optometry.

Please Print or Type

1. Name and License Number of Applicant:

(Last)

(First)

(Middle I.) (OPT License #)

2. Practice Location to be Listed on Statement of Licensure:

(Number and Street)

(City)

(State)

(Zip Code)

(Telephone #)

3. Employer(s) Information for Statement of Licensure Location:

(Name of Employer)

(OD, MD, or DMHC License #)

(Name of Employer)

(OD, MD, or DMHC License #)

Information provided on this form that differs from this Board's, the Medical Board or DMHC records will result in an application processing delay. Please provide an attachment to this form if there are more than two employers at the location of employment.

4. Applicant's Principal Place of Practice:

(Number and Street)

(City)

(State)

(Zip Code)

(Telephone #)

5. Declaration:

I the undersigned hereby declare under penalty of perjury under the laws of the State of California that all statements made on this application are true and correct and that I have read, understand, are, and will be in compliance with the provisions of the California Business and Professions Code sections 653, 3070, 3075 and 3103, California Code of Regulation section 1506, and other such laws, rules and regulations as may be relevant.

Signature of Applicant:

Date Signed: